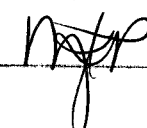


CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

ORIGINAL
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

2013 OCT -2 PM 1:30
DEPUTY CLERK 

WILLIAM SANDERS,
on behalf of plaintiff and a class,

Plaintiff,

vs.

ZWICKER & ASSOCIATES, P.C.,

Defendant.

3 - 13 CV - 3998 N

COMPLAINT – CLASS ACTION

INTRODUCTION

1. Plaintiff William Sanders brings this action to secure redress from unlawful credit and collection practices engaged in by defendant Zwicker & Associates, P.C. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”).

VENUE AND JURISDICTION

2. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA), 28 U.S.C. §1331 and 28 U.S.C. §1337.

3. Venue and personal jurisdiction in this District are proper because defendant’s collection communications were received by plaintiff in this District.

PARTIES

4. Plaintiff William Sanders is an individual who resides in Dallas, Texas.

5. Defendant Zwicker & Associates, P.C. is a law firm organized as a Massachusetts professional corporation. It maintains offices at 80 Minuteman Road, Andover, MA 01810 and 7366 N. Lincoln Ave., Suite 404, Lincolnwood, IL 60712. It is authorized to do business in Texas. Its registered agent and office is CT Corporation System, 350 N. St. Paul St., Suite 2900, Dallas, TX 75201 or 208 S. LaSalle St., Suite 814, Chicago, IL 60604.

6. Zwicker & Associates, P.C. is engaged in the business of using the mails and telephone to collect consumer debts originally owed to others. Defendant states on its web site

(http://www.zwickerpc.com/): "Zwicker & Associates, P.C. is a law firm whose primary business function is debt collection".

7. Zwicker & Associates, P.C. is a debt collector as defined in the FDCPA.

FACTS

8. Defendant has been attempting to collect from plaintiff an alleged credit card debt incurred for personal, family or household purposes.

9. On or about August 1, 2013, defendant sent plaintiff the letter attached as Exhibit A.

10. The letter states that "Because of the age of your debt, American Express cannot report it to a consumer reporting agency."

11. Under the Fair Credit Reporting Act, 15 U.S.C. §1681c, a debt can be reported to a consumer reporting agency for 7 years, and "The 7-year period . . . shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action."

12. A debt that can no longer be reported because of the age of the debt is therefore more than 7 years old.

13. Exhibit A also states that "if American Express does obtain judgment, it may appear on your Credit Report."

14. The statute of limitations applicable to a credit card in Texas is 4 years. V.T.C.A., Civil Practice & Remedies Code § 16.004. Furthermore, payments after default do not interrupt the running of limitation on the debt, Stein v. Hamman, 118 Tex. 16, 6 S.W.2d 352, 353 (1928); Siegel v. McGavock Drilling Co., 530 S.W.2d 894 (Tex. Civ. App.-Amarillo 1975, writ ref'd n.r.e.).

15. If the debt is over 7 year old since default, American Express cannot obtain a judgment on the debt.

16. Exhibit A is a form letter, prepared in a standardized manner, as evidenced

by the form designation on it (AMXUR11).

COUNT I – FDCPA

17. Plaintiff incorporates paragraphs 1-16.

18. Exhibit A misrepresents that defendant's client American Express can obtain a judgment, when that is not the case.

19. Defendant thereby violated 15 U.S.C. §1692e.

20. Section 1692e provides:

§ 1692e. False or misleading representations [Section 807 of P.L.]

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . .

(2) The false representation of--

(A) the character, amount, or legal status of any debt; . . .

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. . . .

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this action on behalf of a class, pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3).

22. The class consists of (a) all individuals in Texas (b) to whom defendant sent a letter in the form represented by Exhibit A (including the material in the box) (c) which was not returned as undeliverable (d) which letter was sent on or after a date one year prior to the filing of this action, and less than 20 days after the filing of this action.

23. The class is so numerous that joinder of all members is not practicable. On information and belief, based on the use of a form letter, there are at least 40 members of the class.

24. There are questions of law and fact common to the class, which common questions predominate over any questions relating to individual class members. The predominant common questions are:

- a. Whether defendant has a policy and practice of sending letters in the form represented by Exhibit A;
- b. Whether Exhibit A misrepresents the ability of defendant to obtain a judgment against the consumer.
- c. Whether such representation violates the FDCPA.

25. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

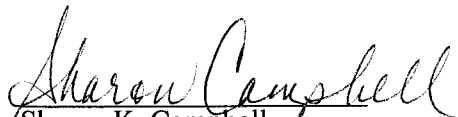
26. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class actions and FDCPA litigation.

27. A class action is superior for the fair and efficient adjudication of this matter, in that:

- a. Individual actions are not economically feasible.
- b. Members of the class are likely to be unaware of their rights;
- c. Congress intended class actions to be the principal enforcement mechanism under the FDCPA.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class and against defendant for:

- (1) Statutory damages;
- (2) Attorney's fees, litigation expenses and costs of suit;
- (3) Such other and further relief as the Court deems proper.


Sharon K. Campbell


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& GOODWIN, L.L.C.
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(312) 739-4200
(312) 419-0379 (FAX)
courtecl@edcombs.com

NOTICE OF ASSIGNMENT

Please be advised that all rights relating to attorney's fees have been assigned to
counsel.


Sharon K. Campbell

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

RECEIVED

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

WILLIAM SANDERS, on behalf of plaintiff and a class

DEFENDANTS

ZWICKER & ASSOCIATES, P.C. CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS(b) County of Residence of First Listed Plaintiff Dallas County
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Dallas County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Edelman, Combs, Lattner & Goodwin, LLC
120 S. LaSalle Street, Suite 1800, Chicago, IL 60603
(312) 739-4200

Attorneys (If Known)

3-13CV-3998N

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
 Violation of the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq. ("FDCPA")

Brief description of cause:
 False or misleading representations

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) PENDING OR CLOSED:

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/06/2013

SIGNATURE OF ATTORNEY OF RECORD

s/Daniel A. Edelman

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE